

REMARKS

In the subject Office Action the Examiner rejected Claim 7 under 35 USC § 112, first paragraph, as being indefinite. Applicants have herein amended Claim 7 and companion Claim 21 to correct the inadvertent ambiguity in the original wording. It will now be clear that the nutrient/protectant component may contain any one or more of the individual agents which provide nutrient or protectant function. In addition, Applicants have amended paragraph 0006 and 0025 of the specification to correct minor typographical errors. It is therefore submitted that the § 112, ¶ 1 rejection has been avoided and should be withdrawn.

The Examiner also rejected Claims 1-2, 4-7 and 9-37 under 35 USC § 103(a) over Pommer et al. Applicants respectfully traverse this rejection. The Examiner acknowledges that Pommer et al are not concerned with a floral protective composition such as Applicants' claimed composition, and that the Pommer et al reference is directed only to an antifungal material. The lack of relevance of the Pommer et al reference is clear simply by the recognition that any antifungal function in Applicants' composition is merely optional and even then is only found, if at all, in one of the components of Applicants' composition

What Pommer et al disclose is a particular type of plant which, when cut, dried and crushed can be made into a powder, which when emulsified, provides an antifungal function when applied to various other plants, including some ornamental plants. At best the Pommer et al disclosure describes only a material which could possibly serve as the "antifungal agent" ingredient which may optionally be in Applicants' nutrient/protectant component. Pommer et al provide no disclosure of the overall composition claimed by Applicants nor of the significance of the other claimed components including the polymer latex or the coating adjuvant. Thus nothing in Pommer et al teaches or discloses anything about Applicants' overall claimed composition and its unique physical and biological properties.

In addition, Pommer et al strongly teaches away from Applicants' composition. It will be noted that in column 2 of the reference, Pommer et al list many ingredients for use with their claimed plant powder antifungal which, if used in conjunction with

Applicants' composition, would destroy Applicants' composition for its floral preservant purpose. For instance, Pommer et al. mentions petroleum fractions, ketones, strongly polar solvents, liquefied gases, metal salts, mineral powders, fibrous organic materials, acids and even lignin sulfite waste liquors. Any or all of these (and others disclosed) would be detrimental in Applicants' compositions, as they would damage the floral materials on which Applicants' composition is to be sprayed or coated; cause Applicants' coating layer to become clouded or opaque, unduly thick, and have a coarse rather than smooth surface; or result in any of a number of other detrimental aspects evident to those skilled in the art. For example, in one of the principal uses of Applicants' composition, protection under heated ambient conditions such as under hot television lights, components of Pommer et al's composition such as iron, copper and other metals and metal salts would themselves heat up and damage the foliage instead of protecting it.

In summary, the Pommer et al reference teaches nothing about Applicants' overall composition and in its various embodiments. Pommer et al's composition not only does not correspond to nor suggest Applicants' claimed composition, it in fact describes materials which those skilled in the art would immediately recognize as entirely contrary in function to Applicants' composition. Such a disclosure as Pommer et al's cannot be considered to make Applicants' claimed composition obvious under any interpretation of § 103(a) either before or after the recent *KSR* ruling of the Supreme Court. Consequently it is submitted that the rejection of Claims 1-2, 4-7, and 9-37 under § 103(a) is not supported by the Pommer et al reference and should be withdrawn.

The Examiner also rejected Claims 3 and 8 under § 103(a) over, respectively, Pommer et al in view of Weber et al and Pommer et al in view of Smith et al. It is submitted that, given the inapplicability of Pommer et al generally, addition of the secondary references does not support rejection of either Claim 3 or Claim 8. As to Claim 8, merely adding Smith et al's antibiotic to Pommer et al's antifungal does not overcome the failure of Pommer et al to teach Applicants' overall composition, nor overcome Pommer et al's contrary teaching that in many of its embodiments the

Pommer et al. composition (and thus also the Pommer et al/Smith et al composition) would be detrimental to protection of floral materials, and therefore not useful. The same is true as to Claim 3, for the combination of Pommer et al's antifungal and Weber et al's weed control and soil moisture products. In neither case can the materials of the secondary references overcome the fatal deficiencies of the Pommer et al materials. Therefore the rejections of Claims 3 and 8 are not adequately supported and must also be withdrawn.

FEES

It is not believed that any fees are due with respect to the amendment of the claims herein. However, should any such fees be due, the Patent and Trademark Office is authorized to charge all such fees to Deposit Account No. 50-1990.

CONCLUSION

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection have been avoided and/or traversed. The Examiner is therefore respectfully requested to enter the amendments herein, reconsider and withdraw the rejections and objections and allow Claims 1-37, as amended, all claims in the case following amendment.

Should the Examiner believe that allowance of this application might be expedited by further discussion of the issues, a telephone call to the undersigned attorney, collect, at the telephone number listed below, is cordially invited.

Respectfully submitted,

Date: November 19, 2007

By:



James W. McClain, Reg. No. 24,536
Attorney for Applicant(s)

GORDON & REES, LLP
101 West Broadway, Suite 1600
San Diego, California 92101

Telephone: (619) 230-7454
Facsimile: (619) 696-7124
Docket No. BTARV-1029874